

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

DR. MARK SCHWARTZ, D.O.,

Plaintiff,

v.

AETNA LIFE INSURANCE COMPANY,
John Does (I-V), ABC Corporations (I-V),

Defendants.

Hon. Dennis M. Cavanaugh

OPINION

Civil Action No. 06-cv-3173 (DMC)

DENNIS M. CAVANAUGH, U.S.D.J.:

This matter coming before the Court on the Report and Recommendation of United States Magistrate Judge Mark Falk, filed on June 5, 2007, whereby Judge Falk recommended that this Court grant Aetna Life Insurance Company's ("Defendant") motion to dismiss Plaintiff's Complaint. No oral argument was heard pursuant to Federal Rule of Civil Procedure 78. For the reasons set forth below, the Report and Recommendation of Judge Falk to dismiss Plaintiff's Complaint is **adopted and affirmed**.

I. DISCUSSION

____ Pursuant to 28 U.S.C. § 636(b)(1)(B), a magistrate judge may submit to a district court proposed findings of fact and recommendations concerning dispositive matters. The United States Supreme Court has held that "[w]here a Magistrate makes a finding or ruling on a motion or an issue, his determination should become that of the district court unless specific objection is filed within a reasonable time." Thomas v. Arn, 474 U.S. 140, 150-51 (1985). Section 636(1) and Local Civil Rule 72.1(c)(2) prescribe a ten day period during which a party may object to a magistrate judge's

report and recommendation. A district court judge may accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate judge. See 28 U.S.C. § 636(b)(1)(C); L. Civ. R. 72.1(c)(2).

In this matter, Judge Falk reviewed Defendant's motion to dismiss for failure to provide discovery and comply with court orders. Plaintiff failed to submit any opposition to Defendant's motion to dismiss. Judge Falk found dismissal is appropriate in light of the following: (1) Plaintiff is personally responsible for his failure to obey court orders and engage in discovery; (2) Plaintiff's failure to provide discovery has caused genuine prejudice to Defendant; (3) Plaintiff has exhibited a history of dilatoriness; (4) Plaintiff's noncompliance is willful; and (5) alternative sanctions would be fruitless. Accordingly, Judge Falk concluded that the sanction of dismissal is appropriate in this case.

The Court has reviewed this matter and agrees with Judge Falk's reasoning as set forth in the Report and Recommendation. Therefore, this Court adopts without hesitation or modification Judge Falk's Report and Recommendation in its entirety.

II. CONCLUSION

_____ For the reasons stated, it is the finding of this Court that Judge Falk's Report and Recommendation to remand this case is hereby **adopted** and **affirmed**.

S/ Dennis M. Cavanaugh
Dennis M. Cavanaugh, U.S.D.J.

Date: June 19, 2007
Orig.: Clerk
cc: Counsel of Record
The Honorable Mark Falk, U.S.M.J.
File